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September 15, 1997

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SEP 15 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

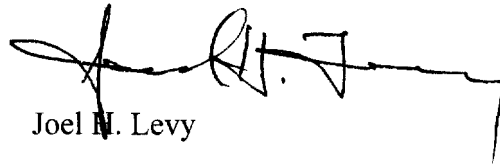
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Mr. Caton

On behalf of Weigel Broadcasting Co. ("Weigel"), licensee of low power television stations W65BT, Milwaukee, Wisconsin and W69BT, South Bend, Indiana, submitted herewith are an original and six copies of Weigel's Comments in response to the Commission's *Notice of Proposed Rule Making*, FCC 97-245 (rel. July 10, 1997).

If there are any questions with regard to the enclosure, please contact the undersigned counsel.

Respectfully submitted


Joel M. Levy

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SEP 15 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

In the Matter of

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Reallocation of Television Channels
60-69, the 746-806 MHz Band

)

ET Docket No. 97-157

)

To: The Commission

COMMENTS OF WEIGEL BROADCASTING CO.

Weigel Broadcasting Co. ("Weigel") submits these comments in response to the Commission's *Notice of Proposed Rule Making*, FCC 97-245 (rel. July 10, 1997) ("NPRM").

Weigel is the licensee of seven low power television stations serving Chicago and Rockford, Illinois; Milwaukee, Wisconsin; and South Bend, Indiana, as well as full-power stations serving Chicago (WCIU-TV, Channel 26) and Milwaukee (WDJT-TV, Channel 58). Two of Weigel's low power stations operate on channels within the channel 60-69 band at issue in this proceeding -- Station W65BT, Milwaukee, Wisconsin, and Station W69BT, South Bend, Indiana.

Weigel's low power station operating on Channel 65 in Milwaukee provides ethnic, foreign language and locally-produced minority programming, as well as live business news and live children's educational programming distributed in the Milwaukee market from Chicago. Weigel's low power station operating on Channel 69 in South Bend is (together with its sister station, low power station WBND-LP, Channel 58) the ABC affiliate for the South Bend market. The important

public service these stations provide to the communities of Milwaukee and South Bend is a matter of record with the Commission.^{1/}

The purpose of these comments is to endorse, for those LPTV operations which are conducted in the 746-806 MHz spectrum, those aspects of the Commission's proposal that would allow continued operation of low power television stations, on some basis, prior to the time that the transition to digital television must be completed. Initially, it is necessary to review the impact of the passage in the Summer of 1997, after the Commission's NPRM in this proceeding was issued, of the Balanced Budget Act of 1997 (hereinafter "Budget Act"). The Budget Act added a new Section 337 to the Communications Act of 1934 which deals with the "Allocation And Assignment Of New Public Safety Services, Licenses And Commercial Licenses." Congress directed the Commission, in accordance with the NPRM herein, to allocate, not later than January 1998, 24 MHz of spectrum in the block from 746-806 MHz for public safety use, "according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General," and to allocate 36 MHz of that spectrum for commercial use to be assigned by competitive bidding. Assignment of public safety services shall commence not later than September 30, 1998 and competitive bidding for the commercial licenses shall commence not any earlier than January 1, 2001.

While instructing the Commission to reallocate the 60 MHz of spectrum between 746 and 806, Congress has been sensitive to the problem of relocation of incumbent broadcast licensees, including certain qualifying low power stations that are operating on frequencies which fall within

^{1/} Weigel has exhaustively documented these stations' public service in comments submitted in the digital television proceeding. See November 27, 1996 Comments of Weigel Broadcasting Co. in MM Docket No. 87-268 (Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service); see also January 24, 1997 Reply Comments of Weigel Broadcasting Co. in MM Docket No. 87-268.

the 60 MHz block. Any full power television broadcast license which operates in that spectrum may continue with such operation at least until the date on which the digital television service transition period terminates, as determined by the Commission. With respect to incumbent qualifying low power stations, the Commission has been directed to assure, consistent with the Commission's plan for allotments for digital television service, that such qualifying LPTV stations are assigned a frequency below 746 MHz to permit the continued operation of such station.^{2/}

The Budget Act also addressed the availability of licensing "unused frequencies" for public safety services. The Congress directed the Commission to waive any requirement of the Act or its rules necessary to permit use of such frequencies, if the Commission finds that:

- A) No other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;
- B) The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;
- C) The use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area of which the application is made;

^{2/} The Conference Report of the House and Senate states: "New section 337(e) requires the Commission to clear all broadcast television licensees from the spectrum located between 746 and 806 MHz at the end of the transition to digital television. The conferees recognize that in clearing this band, the Commission will displace not only full power licensees but also secondary broadcast services, including low power licensees and television translator licensees. Consequently, the conferees expect that the Commission will seek to assure, consistent with its digital television table of allotments, that certain qualifying low power licensees (as defined in new section 337(f)(2)) are assigned frequencies below 746 MHz. The conferees also urge the Commission to accommodate television translator stations to the maximum extent practicable, consistent with the digital television table of allotments and the requirement to accommodate low power television stations pursuant to section 337(e)(2)." 109 Cong. Rec., Part II, pp. 6175-6176 (July 29, 1997).

- D) The unassigned frequency was allocated for its present use not less than two years prior to the date in which the application is granted; and
- E) Granting such application is consistent with the public interest.

The requirements imposed by Congress after the issuance of the NPRM makes plain that the Commission has been given some discretion to implement the reallocation of spectrum from 746-806 MHz and to accommodate public safety and the public interest served by existing low power television operations in such spectrum during the transition to digital television broadcasting. Against this background, Weigel's comments are submitted to suggest appropriate means by which maintenance of LPTV service can be assured during the DTV transition period for the 746-806 MHz spectrum to be allocated for public safety use and for non-public safety commercial use.

First, LPTV stations that are now operating in spectrum which is to be reallocated for public safety use, namely present television channels 63, 64, 68 and 69 should not be displaced until the transition period has ended, unless they have other options for replacement channels and public safety providers have no other options for meeting their spectrum needs. Secondly, qualifying low power television operation on channels which are proposed to be reallocated for non-public safety commercial use and auctioned sometime after January 1, 2001 should not be displaced until the transition to DTV is complete unless replacement channels can be found. Weigel has existing facilities that fall into each of these two categories. It operates Channel 69 as a low power television station in South Bend as the ABC television network affiliate for that market. Termination of that service without provision for an immediate replacement channel would be unduly harmful to the interest of the public in South Bend that desires to see off-the-air ABC television network broadcasts, to Weigel, and, of course, to the ABC television network itself. Weigel also operates a low power television station on Channel 65 in Milwaukee, Wisconsin and the comments that it has

filed in Docket 87-268, referenced above provide extensive detail concerning the public interest benefits and unique needs that are served by that facility in the city of Milwaukee.

The Commission has, as it noted in Paragraph 19 of the NPRM here, taken certain steps in the DTV Proceeding “to provide more flexibility for low power operations” and the Budget Act has clearly imposed upon the Commission the responsibility to not only allocate new spectrum for public safety uses but also to take account of the displacement of existing low power television service rendered in the 746-806 MHz band. Weigel’s low power television operations on Channel 69 in South Bend and Channel 65 in Milwaukee meet the definition of qualifying low power television operations for which the Commission has a special responsibility to assure continued operation, notwithstanding the contemplated allocation of those channels for other uses. Weigel will, of course, make every effort to locate and file for continued operation on replacement channels when and if the time comes that it must unavoidably be required to vacate and/or terminate operation upon the channels it is now using. However, should such replacement channels not be readily available, and, particularly, should they not be available until after the transition to DTV broadcasting has been completed, it is obviously of great public moment to devise appropriate, fair and legal procedures in this proceeding that will carry out the Commission’s responsibilities both under Section 337 of the Communications Act as well as Section 307(b) of the Act and to continue to permit Weigel and others similarly situated to provide service that is of substantial public interest in their communities.

The Commission can balance the need for additional public service spectrum and the need for continuation of LPTV service that is providing important service to their particular communities by flexible implementation of the transition to DTV and the gradual dedication of the 746-806 MHz band to public safety and new commercial uses. Weigel notes, initially, that Congress has not imposed any particular timetable for the implementation of the use of that spectrum for new services.

It has merely directed the Commission to allocate part of the spectrum starting in 1998 for public safety and to auction such remaining spectrum starting in 2001. Neither of these steps is inconsistent with a flexible commencement date for service by new users. Indeed, Congress had recognized that any entity which holds a full power television license operating in the Channel 60-69 spectrum space may continue to provide such service at least until the termination of the transition to digital television service. *See* Section 337(e)(1). Section 337(e)(2) dealing with incumbent qualifying low power stations also has no specific time period within which LPTV stations must vacate the spectrum they use. The Commission should, as with full power stations, allow qualifying low power stations to continue operation to the end of the DTV transition period if they have no other options.

Weigel also believes that the Commission should impose upon new users of the 746-806 spectrum space a requirement, in any event, that they not displace existing low power or translator stations except upon a twelve-month notice period and only after allowing for the parties to informally negotiate solutions to continued operation of low power service until the termination of the DTV transition.

Moreover, in accord with Section 337(c), the Commission should adopt a procedure that would allow low power television stations to petition the Commission and show that there is not any replacement channel available for them but that “unused spectrum” is available for public safety use. Public safety users should be required to apply for and use such non-LPTV spectrum so long as such spectrum provides reasonable alternatives to satisfy their needs that would otherwise be served by the spectrum used by the LPTV station.

With respect to the 36 MHz of spectrum to be assigned by competitive bidding after 2001 for commercial use, the Commission should also make reasonable accommodations to the continued existence of low power television stations until the termination of the DTV transition period if no

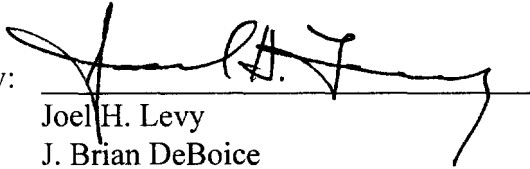
replacement channels are available for such LPTV stations. An anomaly of the Commission's NPRM as well as a rigid reading of new Section 337 would impose on low power television stations that must vacate spectrum a requirement to bid for it in public auction in order to continue operating with service to their communities pending completion of the DTV transition. The unfairness of such a reading of the statute is apparent. Full power television stations are being assigned a second DTV channel and will not have to bid for such spectrum. Full power television stations occupying channels in the 746-806 MHz band are not required to terminate service until the end of the transition period and then will be able to move to their DTV channel in the core spectrum. On the other hand, low power television stations in the 746-806 MHz band (but not elsewhere) could find themselves required to abandon existing low power television service which is of extreme importance to their communities and will not be able to reinstitute it unless they bid for new spectrum within the very spectrum that they are now utilizing. Weigel knows of no public interest that would be served by such a procedure nor is it able to find any compelling indication anywhere within the Budget Act that this was Congress' intent. In order to maintain qualifying low power television service that might be displaced by a rigid application of the spectrum bidding requirements, the Commission should establish rules that would preclude use of any such spectrum by a commercial entity that made the highest bid at auction until after the transition to DTV had been completed and/or a replacement channel for a qualifying low power television station had been located and such station had commenced service outside of the spectrum which had been made available for auction.

Adoption of the above rules would advance the goal of reallocating the spectrum from 746-806 MHz to new uses while accommodating, during the transition to DTV, valuable low power

television service which Congress has recognized should not be uprooted and terminated absent reasonable other choices available to both the low power television service and new users.

Respectfully submitted

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